IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN
JAIPUR
ORDER
S.B. Civil Writ Petition No.556/2000
Kota Mini Bus Malik Sangh
Vs.
State of Raj. & Ors.

Date of Order :: 24th July, 2007

Hon'ble Mr. Justice Mohammad Rafiq

Shri Mahesh Sharma for petitioner.
Shri S.N. Gupta, Deputy Government Advocate

REPORTABLE

This writ petition has been filed by Kota Mini Bus Malik Sangh with the prayer that the respondents be restrained by writ of probation from issuing stage carriage permits to tempo, three wheeler, minidor, auto rickshaw manufactured by Bajaj Tempo Ltd. in Kota and be further restrained them from allowing the minidor operators to ply the minidor auto rickshaw as stage carriage.

I have heard Shri Mahesh Sharma, the learned counsel for the petitioner and Shri S.N. Gupta, the learned Deputy Government Advocate for State.

The petitioner-association is a union of mini bus owners who ply mini buses in the city of Kota. It is contended that the Motor Vehicle Act, 1988 (for short- `the Act') classifies the vehicles as stage carriage and contract carriage depending upon their seating capacity. A motor vehicle which has the seating capacity of more than six passengers excluding driver is classified according to Section 2(40) of the Act as stage carriage whereas contract carriage means a motor vehicle which carries a passenger or passengers for hire or reward and is engaged under a contract, whether

expressed or implied, for the use of such vehicle as a whole for the carriage of passengers mentioned therein and entered into by a person with a holder of a permit in relation to such vehicle or any person authorized by him in this behalf on a fixed or an agreed rate or sum. It is contended that the stage carriage vehicle by its very definition has to have seating capacity of seven or more passenger excluding the driver whereas the contract carriage vehicle should have seating capacity upto six passengers excluding driver. The State Government issued a Circular on 19.1.2000 whereby classification of motor vehicles into stage carriage and contract carriage was explained in detail and directions were issued with regard to the grant of permit

in accordance with seating capacity of the motor vehicle. According to this Circular, a motor vehicle having seating capacity of more than 6 passengers excluding driver or in other words, having seating capacity of seven or more passengers excluding driver has been classified as stage carriage and shall be issued the stage carriage permit and such motor vehicle would ply in the capacity of stage carriage. Similarly a motor vehicle having seating capacity upto six passengers or less excluding driver shall be classified as contract carriage and shall be issued the contract carriage permit.

Bajaj Tempo Ltd. is a manufacturer of tempo, three wheeler, minidor, auto rickshaw which has the seating capacity

of six passengers in all excluding driver. A declaration in Form 22 of the Central Motor Vehicles Rules to this effect has been issued by the manufacturer. According to the Circular aforesaid issued by the Government the minidor has to be classified as a contract carriage taking into consideration the declaration made by the manufacturer itself. M/s Pratap Automobiles who is the dealer of Bajaj Tempo in Rajasthan issued certificate to the customers in which seating capacity of minidor including driver has been shown as seven in all. Copy of such certificate has been placed on record. It is on that basis that contract carriage permit was issued to the minidor auto rickshaw. Copy of one such permit has

been placed on record. When certificate of registration is issued to the minidor by the Registration Authority the total seating capacity is shown to be 7 in all which implies excluding driver, its seating capacity is six only. Shri Mahesh Sharma, the learned counsel for the petitioner argued that M/s. Pratap Automobiles has started mentioning the seating capacity of minidor as 7+1 including driver which is contravening the provisions of Motor Vehicle Act. He, therefore, argued that the dealer M/s Pratap Automobiles has no authority to change the seating capacity of the vehicle. In fact, on the basis of sale certified issued by the dealer, the owners of the minidor have started for applying for stage carriage permits. The

District Collector, Kota wrote a letter to the government on 18.1.2000 to seek clarification whether minidor could be granted stage carriage permit. Regional Transport Authority, Kota also wrote a letter to the government on 22.1.2000 wherein the clarification of the motor vehicles into stage carriage and contract carriage was dealt with in detail and it was further reiterated that the minidor though issued the contract carriage permit were plying as stage carriage. Shri Mahesh Sharma, therefore argued that minidor manufacture by Bajaj Tempo Ltd. is having seating capacity of only 6 passengers and accordingly was capable of being plied as contract carriage. It would be also evident from the declaration made by the manufacturer in

Form No.22 issued by manufacturer that minidor has the seating capacity of maximum 6 passengers in all excluding driver.

Shri Mahesh Sharma argued that proto type of a vehicle is approved on the basis of test by expert authorities in accordance with Rule 126 and 127 of the Central Motor Vehicles Rules, 1989 and on that basis the seating capacity has to be determined. If it is sought to be revised, the only way this could be done was to make a reference to those authorities again. The State Government on its own could not do so. It was therefor prayed that the writ petition be allowed in terms of the prayers aforesaid.

On the other hand, Shri S.N. Gupta,

the learned Deputy Government Advocate opposed the writ petition and argued that writ petition against the permit issued to any individual in respect of any vehicle is not maintainable because such individual has the alternative remedy under the Motor Vehicles Act itself. The State Government has issued a Circular on 9.1.2001 by which the classification of motor vehicle into stage carriage and contract carriage was explained. Section 111 of the Act empowers the State Government to determine the seating capacity of the vehicles. It provides that the State Government has power to make rules with regard to seating arrangements etc. of public service vehicles. Rule 7.72 to Rule 7.81 of the Motor Vehicle Rules, 1990 provides a

detailed procedure about the recognition of the vehicles on the basis of the seating capacity. These rules specifically deal with three wheelers. It was argued that merely because in proto type different seating capacity has been mentioned, this does not mean that the State Government is bound to register the vehicle on the basis of the same seating capacity as indicated therein. On actual ground and on inspection of the vehicle, the authorities of the State Government found that there was difference between the seating capacity as certified in proto type vehicle and what was the actual seating capacity of the vehicle. In order therefore to do away with the aforesaid anomaly the Government has issued a Circular on 15.11.2000 wherein

it was specifically provided that at the time of registration the seating capacity of the vehicle would be decided in accordance with the guidelines mentioned in Rule 7.73 to 7.78 and 7.84 and the seating as provided by the proto type would be irrelevant. Sale certificate issued by the dealer was also therefore absolutely irrelevant in view of Circular dated 15.11.2000. Copy of the subsequent Circular dated 15.11.2000 has been placed on record whereby the government has given guidelines to the authorities to determine the seating capacity in accordance with the Rules of 1990. It was submitted that even otherwise, the registration certificate produced by the petitioner shows the seating capacity as `seven in all'. It would then mean that

vehicle has seating capacity of 6 + 1 i.e. six for passengers and one additional seat for driver. As against this, six in all means five seats for passengers and one seat for the driver. The State Government being empowered under section 111 of the Act to make rules, rules framed by it are statutory in character and those rules are being correctly followed. In support of his arguments, the learned Deputy Government Advocate produced the photographs of minidors for the perusal of the Court which apparently show sufficient space to accommodate one person in the front seat with the driver. It was therefore prayed that the writ petition be dismissed.

I have given by thoughtful consideration to the arguments advanced

by learned counsel for the parties and perused the material on record.

The petitioner-union, it appears, is formed of the mini bus operators and obviously, with the registration of the minidors as the stage carriage vehicle, their business interest is hurt. Understandably therefore they want that minidors should not be registered as stage carriage vehicles so that their profits in the transport business is not shared by the minidor operators. Locus standi of the petitioner therefore cannot be questioned. And for that reason, the objection of alternative remedy also cannot be accepted. Argument that the petitioner-union or its individual members would have the remedy of departmental appeal also cannot be

accepted because in the facts of the present case when the registration of minidors as stage carriage vehicle has been made pursuant to instructions of the government in its Circular dated 15.11.2000, the appeal would be an empty formality because appellate authorities in the government would obviously toe the line set by the government itself. I therefore reject this argument.

What is therefore to be examined is whether the government can have any say in the matter of classification of the vehicles and can on that basis decide whether a particular vehicle should be registered as contract carriage or stage carriage. The petitioner has placed two sale-certificates on record. In one sale-certificate which has been issued on

5.11.99 by M/s. Pratap Automobiles, siting capacity including the driver has been indicated to be 7 i.e. 6 for passengers and one for driver. Another sale-certificate dated 19.1.2000 has also been produced in which seating capacity has been indicated to be 7+1, which would imply seven for passengers and one for driver. Form No.22 which has been issued by the manufacturers themselves indicate seating capacity to be 6+1 which would mean six for passengers and one for driver. Clarification issued by the government on 15.11.2000 indicates that the seating capacity of minidor has been indicated by A.R.A.I., Pune as 6+D whereas on actual verification of this vehicle according to Rule 7.79 and 7.81 (5), it was found that the actual seating

capacity of the vehicle is 7+D. And in this, D indicates for driver. Even though there was sufficient space available in the vehicle close to the seat of the driver for accommodating one more passenger, not indicating such space as additional seat was contrary to the rules. The government therefore treated the seating capacity to be 7+1. On perusal of the photographs which have been produced by learned Deputy Government Advocate, I find that their indeed exists so sufficient space close to the seat of the driver which can even accommodate two passengers which the government has taken as the space for accommodating only one passenger. It is in these facts that I am called upon to decide whether classification of the

minidor made by the government into a stage carriage vehicle is erroneous in law and contrary to the provisions of the law.

Rule 47 of the Central Motor Vehicles Rules, 1989 (for short- `the Rules of 1989') provides that “an application for registration of a motor vehicle shall be made in Form 20 to the registering authority within a period of seven days from the date of taking delivery of such vehicle excluding the period of journey and shall be accompanied by – (a) sale certificate in Form 21; (b) valid insurance certificate; (c) copy of the proceedings of the State Transport Authority or Transport Commissioner or such other authorities as may be prescribed by the State Government for

the purpose of approval of the design in the case of a trailer or a semi trailer; (d) original sale certificate from the concerned authorities in Form 21 in the case of ex-army vehicles; (e) proof of address by way of any one of the documents referred to in rule 4; (f) temporary registration, if any; (g) road-worthiness certificate in Form 22 from the manufacturers, From 22A from the body builders.” An argument is sought to be raised by learned counsel for the petitioner with reference to Rule 126 and 127 of these very rules that when the seating capacity of the minidor has been certified to be 6+1 on the basis of approval of the prototype by expert authorities referred to in these rules, this can be replaced only by making a

reference to such authority and obtaining an opinion to the contrary. Rule 126 provides that “every manufacturer or importer of motor vehicles other than trailers and semi-trailers shall submit the prototype of the vehicle to be manufactured or imported by him for test by the Vehicle Research and Eevelopment Establishment of the Ministry of Defence of the Government and India or Automotive Research Association of India, Pune, or the Central Machinery Testing and Training Institute, Budni (MP), or the Indian Institute of Petroleum, Dehradun, and such other agencies as may be specified by the Central Government for granting a certificate by that agency as to the compliance of provisions of the Act and these rules.” Such approved

certification of the motor vehicles should conform to A.I.S.I. 017-2000. Rule 127 provides that “sale of every motor vehicle manufactured shall be accompanied by a certificate of road-worthiness issued by the manufacturer in Form 22.

What has to be therefore seen is as to what is the purpose of procuring the certificate of road worthiness in Form No.22. Glance at Form No.22 would reveal that, this certificate refers to brand name, with chesis number and engine number of such vehicle in compliance with the provisions of Motor Vehicle Act, 1988 and the Rules made therein. Rule 126 also refers to Form No.22. Rule 47, supra, also refers to Form No.22A, which in fact again is a certificate issued by the manufacturer in relation to the brand

name of the vehicle with its chesis number and engine number and that the vehicle has been fabricated by them and the same complies with the Motor Vehicles Act and the Rules made thereunder. When these forms are examined along with the said provisions relied on by the respondent State namely Rule 7.7 to Rule 7.81 of the Rajasthan Motor Vehicle Rules, 1990 (for short- the Rules of 1990) as against the Rules of 1989, it would be evident that the Rules of 1990 have been framed by the State Government in exercise of the powers conferred on it by Section 111 of the Rajasthan Motor Vehicles Act, 1988. Sub-section (1) of Section 111 provides that “a State Government may make rules regulating the construction, equipment and maintenance

of the motor vehicles and trailers with respect of all matters other than matters specified in sub-section (1) of section 110. Sub-section (2) provides for the space on which the rules can be framed by the State Government. Clause (a) of sub-section (2) clearly provides that the State Government can frame rules in respect of seating arrangements in public service vehicles and the protection of passengers against the weather. It should be therefore clear that the State Government if in exercise of authority conferred upon it by Section 111 of the Act of 1988 has framed rules for, amongst other things seating arrangements in public service vehicles and the protection of passengers against the weather, such rules cannot be said to be

ultra vires of the provisions of the Act.

Adverting now to the rules relied on by the State Government for issuing the impugned Circular dated 15.11.2000, it is to be found that the chapter which contains the relevant rules commencing from Rule 7.72 is captioned as “special rules laying down specifications for motor cycle, rickshaw and tempo bodies.” Apart from requiring the manufacturer to make adequate arrangements for protection of passengers from sun wind and rains and using such material for manufacturer of the body of the vehicle which is of strong and of good quality, Rule 7.72 requires that body of tempo shall be constructed to the satisfaction of the registering authority and shall be securely fastened to the frame of the

vehicles. Rules 7.74 gives the overall width of the vehicle vis-a-vis the number of passengers of auto rickshaw and tempo i.e. four passengers, three passengers and two passengers respectively. Similarly Rule 7.75 gives the overall height of such vehicles. Rule 7.76 requires that the road clearance of every auto rickshaw shall not be more than 20 cm. and not less than 10 cm. We are however more pertinently concerned with Rule 7.79 to 7.81. Rule 7.79 provides that (1) the back of the driver's seat should have at least 112 cm of clearance from the front panel of the body. A wind screen shall be provided for the driver.” In case of a tempo type body, which is what the vehicle in the present case is, there shall be a fixed partition of the

front seat between the driver's seat and the passenger's seat by horizontal bars so that no passenger can sit on the partition. Rule 7.80 provides that “in every 4 passengers auto rickshaw, the entrance to which is from the front of rear and seats are placed across the vehicle there shall be a gangway of not less than 31 cm.” Rule 7.81 provides that “there shall be provided for each passenger reasonably comfortable seating space of not less than 41 cm square measured in straight lines along and at right angles to the front of each seat. The seats shall be placed across the vehicles and when all seats face in the same direction, there shall be at all place a clear space of not less than 64 cm between the backs of either of the

seats and they shall face to the front or two seats to the front and two to the rear back to back.” Clause (5) of Rule 7.81 provides that “in the case of a Tempo not more than two seats of 115 cm x 38 cm shall be placed across the chesis, facing each other in the seating room.”

A thorough study of these provisions would therefore indicate that the rules have taken care as far as possible to provide for the guidelines for the manufacturer of the vehicles not only for the outer part of its body but also for its inner part which are aimed at ensuring safety and security of the passengers. Now what is therefore to be examined is the impugned Circular which the government has issued whether in any way violate any of the provisions of the

Act or the rules. The government authorities on actual verification of the vehicle found that though the seating capacity of the vehicle by the manufacturer in the proto type has been indicated to be 6+1 but actually in the front seat close to the driver, there was sufficient space which could accommodate one additional passenger. And in fact it was found that this was being used as one additional seat and in spite of this seat being there, the same was not included in the seating capacity which was contrary to the rules. Rule 7.14 of the Rules of 1990 has clearly prescribed that every public service vehicle other than a motor cab, shall conform to the norms of seating space, back rest, size and type of seat provided in the table given in

that Rule and according to that Rule and the other rules referred to above, the Government found that the seating capacity prescribed in the prototype vehicle was not as per the rules and therefore it held that the actual seating capacity of the minidor was 7+1. Careful examination of the rules, in the facts of the present case, does not lead him to hold that the direction of the government on such satisfaction in any way violates either any of the provisions of the Act or either of the Rules of 1989 or the Rules of 1990. In fact, the definition of stage carriage as enumerated in Section 2 (40) of the Act of 1988 provides that the “stage carriage” means a motor vehicle constructed or adapted to carry more than six passengers excluding the driver.

Decision of the government which is based on the actual seating capacity of the minidor that it can carry more than 6 passengers excluding the driver cannot be said to be erroneous or violative of any of the provisions of the Act and the rules.

Upshot of the above discussion is that there is no merit in the writ petition. The writ petition is therefore dismissed with no order as to costs.

(Mohammad Rafiq),J.

RS/-